

# EXHIBIT 100

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1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 BOSTON DIVISION

4 -----x

5 STUDENTS FOR FAIR ADMISSIONS,  
6 INC.,

7 Plaintiff,

8 vs.

Civil Action No.  
1:14-cv-14176

9 PRESIDENT AND FELLOWS OF HARVARD  
10 COLLEGE (HARVARD CORPORATION);  
11 and THE HONORABLE AND REVEREND  
12 THE BOARD OF OVERSEERS,

13 Defendants.

14 -----x

15 - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY -

16 DEPOSITION OF CATHERINE DREW

17 GILPIN FAUST, a witness called by the  
18 Plaintiff, taken pursuant to the  
19 applicable provisions of the Federal  
20 Rules of Civil Procedure, before James A.  
21 Scally, RMR, CRR, a Notary Public in and  
22 for the Commonwealth of Massachusetts, at  
23 Harvard University, Massachusetts Hall,  
24 Cambridge, Massachusetts, on Friday,  
March 10, 2017, commencing at 8:52 a.m.

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1 Q. Do you know whether it's been 10 or 20 years?

2 MS. ELLSWORTH: Objection.

3 A. It's been for a considerable time before I  
4 became president.

5 Q. Are you familiar with the Bakke litigation?

6 A. I am.

7 Q. Was Harvard using race at the time of the  
8 Bakke litigation?

9 MS. ELLSWORTH: Objection.

10 A. Yes, it was.

11 Q. Do you know whether Harvard was using race as  
12 an admissions factor in the 1920s?

13 MS. ELLSWORTH: Objection.

14 A. I don't know.

15 Q. Do you know why Harvard began using race?

16 A. I don't know.

17 Q. Since the Bakke litigation, has the reasons  
18 Harvard uses race changed?

19 MS. ELLSWORTH: Objection.

20 A. Harvard has consistently through that time  
21 regarded race as one aspect in our effort to have an  
22 admissions policy that is holistic in its assessment  
23 of students to understand that what makes for a  
24 successful undergraduate experience is a group of

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1 students who are diverse on a variety of realms so  
2 that they play as important a part in educating one  
3 another through their experience together as we play  
4 in what we offer them within a classroom.

5 Q. But I guess my question is: Have the reasons  
6 that you're using race changed since the Bakke  
7 litigation?

8 MS. ELLSWORTH: Objection.

9 A. That's a question that's impossible to answer  
10 because times have changed; people have changed. The  
11 Supreme Court has issued various statements about the  
12 nature of what is required of us. And so it's -- so  
13 much has changed that it's hard to say that somebody  
14 who operated in 1977 is operating with exactly the  
15 same set of presumptions that somebody who's  
16 operating in 2017 is operating with, so.

17 Q. Is Harvard's use of race tied to an interest  
18 in obtaining a critical mass of minority students on  
19 campus?

20 MS. ELLSWORTH: Objection.

21 A. We approach our admissions process looking at  
22 each individual student, assessing that student and  
23 that student's potential contribution. So what we  
24 have in mind is the pathway to a class via individual

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1 record.

2 Q. Do you know how the -- do you know whether  
3 the University of California system uses a top  
4 percentage plan for admissions?

5 A. I believe it does. I'm not positive.

6 Q. Do you know -- do you know whether there are  
7 any colleges that employ a holistic admissions  
8 process but simply do not take race into account as  
9 one of the factors in the holistic admissions  
10 process?

11 A. I'm not aware.

12 Q. Do you know whether that would be possible?

13 A. I do not.

14 Q. Can you say it wouldn't be possible?

15 MS. ELLSWORTH: Objection.

16 A. It would be impossible because a holistic  
17 consideration of a student would require taking race  
18 into account. So --

19 Q. But why?

20 A. The proposal you just made is internally  
21 self-contradictory.

22 Q. Let me ask you this: Does a holistic  
23 admissions process have to take somebody's eye color  
24 into account?

1 Q. All right. What kinds of conversations about  
2 this topic have you had with students?

3 MS. ELLSWORTH: Objection.

4 A. Students have expressed concern about  
5 representation of different groups at different  
6 times. Recently there's -- I've had a number of  
7 students express to me concern about the very small  
8 representation of Native Americans in our student  
9 body. So that's been one recent example of this.

10 Q. Can you recall other examples, discussions  
11 about the representation of certain groups within the  
12 Harvard student body?

13 A. I had a meeting last year with Latinx  
14 students who were concerned about the representation  
15 of Latina and Latino students.

16 Q. And what do you understand "Latinx" to mean?

17 A. It's just a gender-free way of talking  
18 Latino/Latina.

19 Q. And do you understand there to be a  
20 distinction between a student of Hispanic descent and  
21 a student of Latinx descent?

22 A. I think different students have different  
23 perspectives on that, and they characterized  
24 themselves as Latinx in the discussion to which I'm

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1 referring.

2 Q. Do you know whether Harvard does any  
3 reporting of students by using the Latinx  
4 designation?

5 A. I don't know exactly what designations we --  
6 we use.

7 Q. Okay. Besides the Native American and Latinx  
8 examples you just used, do you recall any other  
9 discussions with students regarding representation  
10 within the student body by racial group?

11 A. In other words, numbers of students within  
12 the student body?

13 Q. Correct.

14 A. Not in the college, no.

15 Q. Okay. What did you tell the students who  
16 raised these concerns with you?

17 A. They were part of more general discussions  
18 about -- well, with the Latino students, it was a  
19 more general conversation about issues that -- I  
20 would designate issues of inclusion and belonging  
21 that included a dimension of demographic presence.  
22 And so I listened to their concerns.

23 With the issue of Native American students,  
24 it's -- it's an area in which the students alleged

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1 Harvard had had an early commitment in the 17th  
2 century and had abandoned its commitment in the years  
3 since, and that was the nature of that conversation.

4 I tend to be a listener in these  
5 conversations.

6 Q. Do you recall telling either groups of these  
7 students any action that Harvard would take to  
8 address their concerns?

9 MS. ELLSWORTH: Objection.

10 A. I saw my role as a listener.

11 Q. Did you tell either of these groups of  
12 students that Harvard's admissions process depends  
13 upon individual considerations and that the group  
14 representation is simply not a goal of the admissions  
15 process?

16 MS. ELLSWORTH: Objection.

17 A. I don't recall having that discussion with  
18 either group.

19 Q. Did you tell them that Harvard would in fact  
20 be mindful of their concern about the overall  
21 representation of particular groups in its admissions  
22 process?

23 A. I don't recall exactly what I said to them.  
24 I was mostly listening.

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1           Q. Were these meetings in person, or was there  
2 any written element to these discussions?

3           A. They were meetings in person. I don't recall  
4 if there was a follow-up letter or if there was any  
5 written aspect.

6           Q. With respect to discussions about  
7 representation of Harvard within racial groups with  
8 faculty members, what do you remember about those  
9 discussions?

10          A. A number of faculty recently have been very  
11 concerned about the very small numbers of Native  
12 Americans.

13          Q. Other than discussions about Native American  
14 representation, do you remember any other discussions  
15 with faculty members about representation of  
16 concerned groups?

17          A. In the college, I don't.

18          Q. And what do you recall telling the faculty  
19 members with respect to their concerns about the  
20 numbers of representation of Native Americans?

21          A. I recall listening to their concerns and ...

22          Q. Do you recall -- do you recall telling them  
23 whether Harvard would take any action on their  
24 concerns?

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1 MS. ELLSWORTH: Objection.

2 A. I don't recall.

3 Q. Do you remember saying anything at all?

4 A. I recall listening.

5 Q. So you don't remember what, if anything, you  
6 said?

7 A. I don't.

8 Q. And the same with the students: You don't  
9 remember what, if anything, you said to them?

10 MS. ELLSWORTH: Objection.

11 A. I don't recall.

12 Q. What about concerns that staff members have  
13 raised with you regarding the representation of  
14 certain groups on campus?

15 A. We have a Harvard Native American program and  
16 the staff member who runs that has expressed concerns  
17 also about Native Americans.

18 Q. And what -- what is this Native American  
19 program?

20 A. It's a program that seeks to work around  
21 academic resources related to Native American  
22 studies, provide programming around issues related to  
23 Native American studies.

24 Q. It's not a faculty role?

1           A.   There's a director who is not a faculty  
2   person.

3           Q.   And this is the person who had the  
4   conversation --

5           A.   Yes.

6           Q.   -- with you about this issue?

7               What do you -- do you recall -- strike that.

8               What do you remember about this conversation  
9   regarding the representation of students on campus?  
10   I assume it was Native American representation?

11          A.   Uh-huh.

12          Q.   What was his concern or her concern?

13                   MS. ELLSWORTH:   Objection.

14          A.   There's been a good bit of discussion in the  
15   Faculty of Arts & Sciences in the past couple of  
16   years about this question and also about the academic  
17   resources devoted to Native American studies.  The  
18   conversation has been mostly at that level.  So I  
19   have been party to discussions that really were  
20   centered elsewhere and that have been a focus of some  
21   decision-making and concern about academic resources  
22   in the Faculty of Arts & Sciences.

23          Q.   And what, if anything, do you recall saying  
24   in response to these concerns?

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1           A. The concern about having Native American  
2 history well represented within history seemed to me  
3 a reasonable concern, and I agreed to meet with a  
4 candidate who was being recruited as a professor in  
5 Native American studies.

6           Q. What about the concerns with respect to the  
7 representation of Native Americans within the study  
8 body?

9                       MS. ELLSWORTH: Objection.

10          A. I've taken no role in relationship to that.

11          Q. Do you remember saying anything in response  
12 to those concerns?

13          A. No.

14          Q. Who -- who is the staff member that you're  
15 referring to, the name?

16          A. I think her name --

17          Q. I'm sorry?

18          A. I shouldn't say. I will get the name wrong.

19          Q. Okay. Do you know what the title is?

20          A. Director of the Harvard University Native  
21 American program.

22          Q. Do you remember the names of the faculty  
23 members who had the discussions that we referred to a  
24 few moments ago?

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1 MS. ELLSWORTH: Objection.

2 A. There are applicants who don't provide us  
3 with that information, as we discussed earlier, and  
4 we do our best to understand those individuals apart  
5 from that information.

6 Q. And it's possible to make an admissions  
7 decision without that information?

8 MS. ELLSWORTH: Objection.

9 Q. Isn't it?

10 A. We have less understanding than we would if  
11 we had the additional information.

12 Q. But you still make the decision; right?

13 A. There's a dimension of understanding that is  
14 diminished.

15 Q. It's diminished, but it does not prevent you  
16 from making a call?

17 A. As I understand it, we then make the call.

18 MR. STRAWBRIDGE: Now's a good  
19 time for a break.

20 MS. ELLSWORTH: Great. Thank you.

21 (Recess: 11:13 a.m. to 11:24 a.m.)

22 BY MR. STRAWBRIDGE:

23 Q. President Faust, are there occasions since  
24 you've been president of the university that you've

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1 been made aware of allegations that the admissions  
2 process discriminates against Asian-Americans?

3 A. Yes.

4 Q. Okay. And what are those occasions?

5 A. They've been in connection with this lawsuit.

6 Q. This lawsuit. Apart from this lawsuit, have  
7 you had occasion to receive or otherwise learn of  
8 allegations that the admission process discriminates  
9 against Asian-Americans?

10 MS. ELLSWORTH: And I'll just  
11 remind the witness not to disclose any  
12 conversations with counsel. To the  
13 extent you can answer the question, go  
14 ahead.

15 A. The Overseers election with the allegations  
16 of at least one of the candidates.

17 Q. Candidate Ron Unz?

18 A. That's correct.

19 Q. Besides that, the allegations raised by Mr.  
20 Unz, have you otherwise learned of any allegations of  
21 discrimination against Asian-Americans to the  
22 admissions process?

23 MS. ELLSWORTH: The same objection  
24 and reminder.

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1 Go ahead.

2 A. I receive mail from disgruntled people who've  
3 been rejected, and so there may have been examples of  
4 this complaint in that mail.

5 Q. When you received those emails, what do you  
6 do with them?

7 A. They are handled by my correspondence team.  
8 There's usually a polite response.

9 Q. And in that polite response, is there any  
10 reference to the actual merits of the allegations?

11 MS. ELLSWORTH: Objection.

12 A. Not usually, no.

13 Q. Do you just ignore the allegations?

14 MS. ELLSWORTH: Objection.

15 A. Letters that come after the admissions  
16 process are not usually ones that we pay a great deal  
17 of specific attention to.

18 Q. In some cases, a very short polite response  
19 will be all that goes out?

20 A. Yes.

21 Q. Do you ever modify the response based upon a  
22 particular history or identity of the complainant?

23 MS. ELLSWORTH: Objection.

24 If you can answer the question, go

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1 ahead.

2 A. Oh, I don't recall doing so.

3 Q. Other than these, you know, occasional  
4 correspondence from individuals, Mr. Unz's campaign,  
5 this lawsuit, do you recall learning of any other  
6 allegations of discrimination against Asian-Americans  
7 in the admissions process?

8 MS. ELLSWORTH: Same objection and  
9 reminder about counsel, but go ahead.

10 THE WITNESS: Right.

11 A. I recall a number of years ago, prior to a  
12 meeting of the -- a reunion of the Asian-American  
13 alumni association, having mentioned to me that there  
14 had been a Department of Education investigation of  
15 such allegations that had found no foundation for  
16 them.

17 Q. Do you remember when that Department of  
18 Education investigation took place?

19 A. It was before my presidency.

20 Q. Does sometime in the late 1980s sound right?

21 A. I don't know.

22 Q. And who mentioned that to you before the  
23 meeting of the Asian-American alumni association?

24 A. I don't recall.

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1 Q. Do you remember what -- what year this  
2 meeting was?

3 A. I don't recall.

4 Q. Do you know if it was in the last couple of  
5 years or older than that?

6 A. It's older than that.

7 Q. And was it somebody on your staff who  
8 mentioned it or somebody who was attending the  
9 meeting?

10 MS. ELLSWORTH: Objection.

11 A. I don't recall.

12 Q. Do you remember any other occasions of  
13 learning of allegations of Asian-American  
14 discrimination?

15 MS. ELLSWORTH: Same objection and  
16 reminder.

17 A. I don't recall.

18 Q. Do you recall ever learning about an  
19 investigation by the Office of Civil Rights of the  
20 Department of Education in 2012 regarding  
21 discrimination against an applicant based on status  
22 as an Asian-American?

23 MS. ELLSWORTH: And, again, just a  
24 reminder to the witness not to disclose

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1           conversations with counsel. If you can  
2           answer the question otherwise, go  
3           ahead.

4           A. I don't recall.

5           Q. Are you normally involved -- are you normally  
6           informed of investigations by the Department of  
7           Education of Harvard?

8           A. Not necessarily.

9           Q. Who -- who would handle that?

10          A. Office of the General Counsel.

11          Q. Does Harvard have a department that's  
12          responsible for compliance with federal laws?

13                   MS. ELLSWORTH: Objection.

14          A. It has a variety of offices or of groups that  
15          are responsible. We have a whole research compliance  
16          operation, for example.

17          Q. Okay. And does Harvard have -- have people  
18          specifically dedicated to ensuring compliance with,  
19          for example, Title IX of the education code of the  
20          United States?

21          A. Yes.

22                   MS. ELLSWORTH: Objection and just  
23          a reminder on communications with  
24          counsel.

1 on the 2100 applicants who they're modelling to  
2 determine were the most likely to be admitted;  
3 correct?

4 A. That is correct.

5 Q. All right. And they were examining the  
6 resulting demographics and admit rates by ethnicity.

7 A. Uh-huh.

8 Q. Right? It's a preliminary, and it's for  
9 discussion, down at the bottom there?

10 A. Yes.

11 Q. So the next page, the "Models Used," do you  
12 understand this to be describing sort of the various  
13 increment --

14 A. Oh, I just -- go ahead. Finish.

15 Q. Please.

16 A. I'm not a statistician. I have no idea  
17 whether this strategy is a good one, whether they've  
18 used the right variables, whether they've used the  
19 right statistical tools. So I would say this is an  
20 exercise. I would not give it more credibility than  
21 being an exercise until I had someone -- they say  
22 it's preliminary, for discussion. I would like to  
23 hear the results of broad discussion about what  
24 exactly they've undertaken and the validity.

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1 A. Yes.

2 Q. Okay.

3 A. It is.

4 Q. What are the distinctions between those two  
5 efforts?

6 A. Well, there are several distinctions. One  
7 was looking at the question of diversity and the  
8 logic of diversity, and it was a faculty of arts and  
9 sciences committee. The current task force on  
10 inclusion and belonging is university-wide, and it's  
11 meant to make not just a statement but to make  
12 recommendations about the dimensions of the Harvard  
13 experience that could be changed or improved or  
14 transformed in order to make sure that the variety of  
15 individuals who are part of our community all feel  
16 full -- to be -- they are full members of the  
17 community.

18 Q. Is any part of that task force designed to  
19 address concerns that Harvard's admissions process  
20 disadvantages Asian-Americans?

21 A. It is not specifically designed to address  
22 that question.

23 Q. Do you think that concerns that Harvard's  
24 admissions process disadvantages Asian-Americans need

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1 to be addressed?

2 MS. ELLSWORTH: Objection.

3 A. No, I don't.

4 Q. Why not?

5 A. Because I don't think that Harvard admissions  
6 disadvantages Asian-Americans.

7 Q. And, in fact, you're so confident in that  
8 that you don't think the topic needs to be addressed?

9 MS. ELLSWORTH: Objection.

10 A. It's -- the committee is meant to address the  
11 issues that are raised in the course of its  
12 consultations with individuals around the campus, and  
13 that will determine the specific nature of its  
14 actions.

15 Q. I mean your email here --

16 MS. ELLSWORTH: Hold on one  
17 second.

18 Are you finished with your answer?

19 THE WITNESS: Yes.

20 Q. Your email here said, you know, you  
21 acknowledged that of course black students are  
22 integral to Harvard. You didn't doubt that as a  
23 factual matter, but you still felt the need to  
24 address it. Why isn't that true with respect to

1 concerns that Asian-Americans are disadvantaged in  
2 the admissions process?

3 MS. ELLSWORTH: Objection.

4 A. I don't understand the logic of your  
5 question.

6 Q. My point is I don't -- do you think that the  
7 response depends on whether you factually agree with  
8 the concern, or is the existence of the concern  
9 worthy of a response?

10 MS. ELLSWORTH: Objection.

11 A. The concern about Asians being disadvantaged  
12 in the admissions process is being raised most  
13 vehemently by you and your colleagues. It's not an  
14 issue that gets raised with me on a daily basis, or  
15 even a weekly or monthly basis, by students here at  
16 the university.

17 Q. Do you believe that Students for Fair  
18 Admissions represents the interests of Asian-  
19 Americans?

20 MS. ELLSWORTH: Objection.

21 A. I have no idea what it represents.

22 Q. Do you have any reason to doubt that the  
23 membership of the Students for Fair Admissions  
24 includes Asian-Americans?

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1 Q. Do you know whether those assessments have  
2 been related to you as the part of any investigation  
3 into the possible benefits of Harvard's admission  
4 policies?

5 MS. ELLSWORTH: Objection.

6 A. I've never heard them in that context.

7 Q. Do you think it's an idea that deserves some  
8 study?

9 MS. ELLSWORTH: Objection.

10 A. My understanding of the idea is that it has  
11 been entirely discredited.

12 Q. Entirely discredited. And that's based on  
13 what other people have told you?

14 A. Yes.

15 Q. You didn't need to do your own investigation?

16 MS. ELLSWORTH: Objection.

17 A. No, I didn't.

18 Q. I mean we talked earlier about the history of  
19 Jewish discrimination, and you were very resistant to  
20 taking someone else's word for what had happened at  
21 Harvard.

22 MS. ELLSWORTH: Objection to the  
23 characterization.

24 A. 97 percent of our students graduate.

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1 COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

2  
3 I, JAMES A. SCALLY, RMR, CRR, a  
4 Certified Shorthand Reporter and Notary Public duly  
5 commissioned and qualified in and for the  
6 Commonwealth of Massachusetts, do hereby certify that  
7 there came before me on the 10th day of March, 2017,  
8 at 8:52 a.m., the person hereinbefore named,  
9 CATHERINE DREW GILPIN FAUST, who provided  
10 satisfactory evidence of identification as prescribed  
11 by Executive Order 455 (03-13) issued by the Governor  
12 of the Commonwealth of Massachusetts, was by me duly  
13 sworn to testify to the truth and nothing but the  
14 truth of her knowledge concerning the matters in  
15 controversy in this cause; that she was thereupon  
16 examined upon her oath, and her examination reduced  
17 to typewriting under my direction; and that this is a  
18 true record of the testimony given by the witness to  
19 the best of my ability.

20 I further certify that I am neither  
21 attorney or counsel for, nor related to or employed  
22 by, any of the parties to the action in which this  
23 deposition is taken, and further, that I am not a  
24 relative or employee of any attorney or counsel  
employed by the parties hereto or financially  
interested in the action.

My Commission Expires: April 8, 2022

James A. Scally, RMR, CRR  
CSR/Notary Public